

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  03500.014278.
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed name _____	Application Number  09/507,941	Filed  February 22, 2000
	First Named Inventor  MASATO OCHIAI	
	Art Unit  2143	Examiner  David E. England

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.  
 assignee of record of the entire interest.  
 See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
 (Form PTO/SB/96)  
 attorney or agent of record.  
 Registration number 38,667  
 attorney or agent acting under 37 CFR 1.34.  
 Registration number if acting under 37 CFR 1.34 \_\_\_\_\_



\_\_\_\_\_  
 Signature  
**Lock See Yu-Jahnes**

\_\_\_\_\_  
 Typed or printed name  
**Lock See Yu-Jahnes**  
 \_\_\_\_\_  
 Telephone number  
**(212) 218-2100**

\_\_\_\_\_  
 Date  
**September 17, 2008**

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
 Submit multiple forms if more than one signature is required, see below\*.

<input type="checkbox"/>	*Total of _____ forms are submitted.
--------------------------	--------------------------------------

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**Reply Under 37 C.F.R. § 1.116  
EXPEDITED PROCEDURE  
TC/Art Unit 2143**

03500.014278.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
MASATO OCHIAI ) : Examiner: David E. England  
Application No.: 09/507,941 ) : Art Unit: 2143  
Filed: February 22, 2000 ) : Conf. No.: 2960  
For: NETWORK DEVICE CONTROL )  
APPARATUS, NETWORK DEVICE :  
CONTROL METHOD, NETWORK )  
DEVICE CONTROL PROGRAM, AND :  
COMPUTER-READABLE RECORDING )  
MEDIUM STORING NETWORK :  
CONTROL PROGRAM THEREIN ) : September 17, 2008

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant requests a pre-appeal brief review of the final Office Action dated April 17, 2008. The period for response to the Office Action has been extended to September 17, 2008, by the accompanying Petition Under 37 C.F.R. § 1.136(a). This Request is being filed with a Notice of Appeal. No amendments are being filed with this Request.

## REMARKS

### I. Status of the Claims

Claims 1, 2, 4, 6, 8-10, 12, 13, 15, 17, 19-21, and 47-49 are pending, of which of which Claims 1, 8, 9, 12, 19, 20, 47, and 49 are in independent form. Claims 1, 2, 4, 6, 8-10, 12, 13, 15, 17, 19-21, and 47-49 are rejected under 35 U.S.C. § 112, ¶ 1, as allegedly failing to comply with the written description requirement. Claims 1, 2, 4, 12, 13, 15, and 47-49 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RFC 2390 in view of U.S. Patent No. 6,438,607 (*Fujimori et al.*). Claims 6, 9, 10, 17, 20, and 21 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RFC 2390 and *Fujimori et al.* in view of U.S. Patent No. 5,850,388 (*Anderson et al.*). Claims 8 and 19 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RFC 2390 and *Fujimori et al.* in view of U.S. Patent No. 6,310,858 (*Kano et al.*).

### II. Subject Matter Recited by Independent Claims 1, 8, 9, 12, 19, 20, 47, and 49

Independent Claim 1 is directed to a network apparatus that includes a receiving unit, a detecting unit, and a setting unit. The receiving unit receives data from a network. The detecting unit detects a value indicative of a data length, where the value is in a packet header of the data received by the receiving unit, and the packet header is provided for a predetermined protocol. The setting unit sets a logic address of the network apparatus based on a destination logic address of the received data so that the logic address of the network apparatus and the destination logic address of the received data are the same in a case where the detected value indicative of the data length is a specific value indicative of a specific data length different from actual data length of the received data, and a destination physical address of the received data and a physical address of the network apparatus are the same.

Independent Claims 8, 9, 47, and 49 are each directed to a network apparatus that includes a setting unit that sets a logic address of the network apparatus. Independent Claims 12, 19, and 20 are each directed to a method of controlling a network device, and each includes a setting step of setting a logic address of the network device.

### III. There Are Clear Errors in Each of the Examiner's Rejections

#### A. The Specification Provides Adequate Support for Setting of a Logic Address of a Network Apparatus

On pages 2-3 of the Office Action dated April 17, 2008, the Examiner alleges that, “[t]here is no teaching, in any part of the specification, that teaches the setting unit setting a logic address of a network apparatus.” To support this allegation, the Examiner refers to the following sentences on page 23 of the specification:

When the data length 704 is equal to 507 bytes in step S1003, the destination IP address 711 of the IP Header 502 is set as an own IP address in step S1004. After the IP address was set, the pseudo ICMP management module 405 hands the packet to the ICMP management module 404. In this instance, the unnecessary Ethernet Header and IP Header are removed.

Based on the foregoing sentences, the Examiner concludes that it is the IP Header of the packet that is set in Steps S1003 and S1004. However, the final sentence referred to by the Examiner undermines the Examiner’s erroneous conclusion. The Examiner concludes that an address of the IP Header is set in Steps S1003 and S1004, despite the teachings in the specification that this IP Header is unnecessary and is removed from the packet. That is, the Examiner concludes that the specification teaches that an address of an unnecessary IP Header is set, and then the IP Header is removed.

As set forth in detail on pages 12-14 of the Amendment dated January 11, 2008, it is the network apparatus’ own IP address that is set in Steps S1003 and S1004. Support for the setting unit of Claim 1 setting the address of the network apparatus clearly is found throughout the specification (see, e.g., Figure 10, steps S1003 and S1004 and corresponding description in the specification on page 22, line 14, *et seq.*). In addition, page 2, line 15, to page 3, line 12, of the background section of the specification, provide a context for properly interpreting Figure 10, as discussed on pages 12-13 of the Amendment dated January 11, 2008.

Further support for the setting unit recitation can be found on page 23, line 26, through page 24, line 1, wherein it states that “[t]he user, ... in case of setting the IP address from the PC 103 to the network board 101”; page 27, lines 8-10, wherein it states that “[i]n case of setting the IP address to the network board 101 from the PC 103, the user ....”; and page 36, lines 16-23, wherein it states that “[a]s described above, according to the invention, ..., the setup of the

IP address in the network device apparatus ... can be safely performed in accordance with the attribute value in the network protocol of the data to be transmitted.”

Accordingly, Applicant respectfully submits that the specification is replete with support for a setting unit/step, which sets an IP address of a network apparatus.

B. The Invention Recited in Each of Independent Claims 1, 8, 9, 12, 19, 20, 47, and 49 is Patentable Over RFC 2390, Fujimori et al., Anderson et al., and Kano et al.

On page 3 of the Office Action dated April 17, 2008, the Examiner states that, “[f]or Examination purposes and in light of the specification of what is truly being claimed in the Independent claims, the Examiner will treat the limitations of ‘setting the apparatus address’ as the ‘header of the received packet as the logic address.’” The cited references have not been applied properly against the claims, because of the Examiner’s erroneous interpretation of the specification, as discussed in detail above.

RFC 2390 relates to a communications protocol that enables a station to request a protocol address corresponding to a given hardware address. RFC 2390 teaches that the requesting station sends a packet to the hardware address, which returns a packet in which a protocol address that corresponds to the hardware address is set. Accordingly, RFC 2390 discloses setting a logic address of a packet, but is silent regarding setting a logic address of a network apparatus. Moreover, nothing has been found in *Fujimori et al.*, *Anderson et al.*, and *Kano et al.* that is believed to teach or suggest setting a logic address of a network apparatus.

Accordingly, Applicant submits that a *prima facie* case of unpatentability has not been established for independent Claims 1, 8, 9, 12, 19, 20, 47, and 49, and the claims dependent therefrom. Therefore, these claims are submitted to be patentable over RFC 2390, *Fujimori et al.*, *Anderson et al.*, and *Kano et al.*, whether considered alone or in any permissible combination, if any.

IV. Conclusion

For at least the foregoing reasons, Applicant respectfully submits that the Examiner has made clear errors in the outstanding rejections. Accordingly, Applicant requests that such rejections be withdrawn, and that a Notice of Allowance be issued in the subject application.

Applicant expressly reserves the right to assert additional errors in the outstanding rejection beyond those raised herein in a subsequent appeal brief or other response, should a Notice of Allowance not follow this submission.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,



Lock See Yu-Jahnes  
Attorney for Applicant  
Registration No.: 38,667

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

FCHS\_WS 2395115\_1